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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,127	09/10/2004	Keiichi Abe	47233-0044	8837

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EXAMINER
TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	

MAIL DATE	DELIVERY MODE
09/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/507,127	ABE ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 September 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claims 7-8 and 23-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 is vague and indefinite; what does applicant mean by " a material". What does a material indicate or encompass?

Claim 8 has the same problem as claim ,

In claim 23, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

In claim 24, what does applicant mean by in the form of " internal medicine"; what kind of form is internal medicine form?

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-3, 5, 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Pihlava et al (WO 02/062812A1).

Pihlava et al disclose a process for preparing an SDG-rich food comprising the step of extracting a plant material containing SDG with a basic alcohol. The plant material is defatted flaxseed. The basic alcohol is sodium hydroxide-methanol. (page 2, lines 21-28, page 3 lines 25-31. Pihlava et al disclose a process comprising the step claimed.

Claims 12, 17-19 rejected under 35 U.S.C. 102(e) as being anticipated by Empie et al.

Empie et al. disclose a food comprising SDG and isoflavone. The SDG is extracted from natural plant source including flaxseed. (see col. 2 lines 49-63, col. 3 lines34-60, col. 4 line 17)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pihlava et al.

Pihlava et al do not disclose the concentration of alcohol as claimed.

It would have been within the skill of one in the art to determine the appropriate concentration of alcohol to obtain the most optimum extraction. The amount is a result-effective variable which can readily be determined by one skilled in the art through routine experimentation.

Claims 7-11, 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pihlava et al in view of Empie et al.

Pihlava et al do not disclose adding the SDG-rich product to material for food and/or drink, the amount of daily intake of SDG, the amount of SDG in the food and the health benefits as claimed.

Empie et al disclose a composition comprising SDG and isoflavones. The composition is made in the form of pill, tablet, capsule, liquid or ingredient in a food including health bars. The composition has health benefits such as alleviating hot flahes, osteoporosis, symptoms associated with menstruation and other health benefits. The composition may also be administered as a food supplement or as a food ingredient. (see col. 3 lines 34-55, col. 6 lines 57-67, col. 7 lines 17-21)

It would have been obvious to one skilled in the art to add the SDG-rich product of Pihlava et al to food and drink to obtain the health benefits shown by Empie et al. It

would have been obvious to add the SDG to any food product or drink when it is desired to obtain the health benefits provide by SDG in such food or drink product. It would have been obvious to add the SDG in any amount to obtain any varying daily intake depending on the benefits desired. Such parameter can readily be determined by one skilled in the art through routine experimentation.

Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Empie et al .

The teaching of Empie et al is described above.

Empie et al do not disclose the amount of daily intake of SDG and the amount of SDG in the food and the amount of daily intake of isoflavone.

It would have been obvious to add the SDG and isoflavone in any amount to obtain any varying daily intake depending on the benefits desired and the optimum balance with regard to taste and flavor or the food product. Such parameter can readily be determined by one skilled in the art through routine experimentation.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Westcott et al disclose a process for extracting lignans from flaxseeds.

Japan patent no. 9-208461 cited on the IDS filed on Sept. 10, 2004 was not considered because there is no English translation or discussion of its relevancy.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hendricks Keith can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 2, 2007

LIEN TRAN
PRIMARY EXAMINER
Group 1700